

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROL WILCOTS)	
Claimant)	
VS.)	
)	Docket No. 177,216
COUNTY OF SEDGWICK)	
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Award entered by Assistant Director Brad E. Avery on January 17, 1997. The Appeals Board heard oral argument June 17, 1997.

APPEARANCES

Claimant appeared by her attorney, W. Walter Craig of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, E. L. Lee Kinch of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Chris Cole of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board reviewed and considered the record listed by the Assistant Director in the Award. In addition, the Appeals Board considered the report of Dr. Blake C. Veenis, who had performed an independent medical exam.

ISSUES

The Assistant Director denied benefits on the grounds that claimant had failed to file a timely written claim as required by K.S.A. 44-520a, and claimant asks the Appeals Board to review this finding. In the event the Board finds timely written claim was made, the

parties have stipulated that the Appeals Board also then decide the remaining issues, average weekly wage and nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Appeals Board finds that claimant did make timely written claim as required by K.S.A. 44-520a.

K.S.A. 44-520a requires a claimant to deliver a written claim for compensation to the employer within 200 days from the date of accident or last payment of compensation. Failure to do so acts as a complete bar to a claim for compensation. K.S.A. 44-557 extends the time for written claim to one year in cases where the employer who knows of the accident has not filed a report of accident within 28 days. Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971) and Ricker v. Yellow Freight Lines, Inc., 191 Kan. 151, 379 P.2d 279 (1963).

The parties have stipulated that claimant met with personal injury by accident on December 14, 1987, when she slipped in a pool of water in front of the Sedgwick County Courthouse and landed on her right arm. Claimant alleges that she thereafter suffered ongoing aggravation of her injuries through and including October 28, 1992. However, the Assistant Director found, and the Appeals Board agrees, that the claimant suffered no additional permanent injury after the initial trauma on December 14, 1987. The Appeals Board, therefore, finds December 14, 1987, to be the date from which timeliness of written claim should be calculated.

The evidence also indicates that claimant would have had one year to make the written claim. The record includes the Employer's Report of Accident bearing a date more than 28 days beyond the December 14, 1987, date of accident. Respondent argues the Report of Accident is not admissible, citing K.S.A. 44-557(c). The Appeals Board concludes that the date of the report is admissible but agrees the report may not be used as an admission of the accident or to prove the facts stated in the report.

The record also shows that claimant received authorized medical treatment for an extended period of time. As indicated, the one year begins to run from the date of accident or last payment of compensation. Medical expenses are compensation under the Workers Compensation Act, and payment of those expenses extends the time for written claim. Odell v. Unified School District, *supra*. In this case claimant was treated by a series of physicians beginning first with physicians at the emergency room at St. Joseph Hospital and then Robert L. Eyster, M.D., Larry K. Wilkinson, M.D., W. A. McClanahan, M.D., and J. Mark Melhorn, M.D. Although there was a 200-day lapse of time between treatment by Dr. McClanahan and Dr. Wilkinson, there was not a one-year lapse until the period between Dr. Melhorn's exam on December 14, 1989, and the exam by Anthony G. A. Pollock, M.D., on December 20, 1990. When the employer/insurance carrier has authorized a course of

medical treatment, failure to pay medical bills for that treatment does not start the time for filing written claim. On the other hand, if the time for filing a claim has lapsed, the furnishing of medical treatment does not revive the claimant's right to file a claim. Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973); Rutledge v. Sandlin, 181 Kan. 369, 310 P.2d 950 (1957).

The Appeals Board finds that the slightly over one year which elapsed between the time claimant saw Dr. Melhorn in December of 1989 and the treatment by Dr. Pollock in December 1990 does not prevent claimant from making written claim. When claimant last saw Dr. Melhorn, she was not released from treatment. The records reflect that claimant was expected to return. When she saw Dr. Pollock in 1990 she did so without any preauthorization. That medical care was paid for as authorized medical care without dispute. The evidence suggests that claimant was authorized to return and medical care had not terminated. Dr. Pollock followed claimant through December 18, 1991. Claimant thereafter returned to Dr. Melhorn and was treated by Dr. Melhorn until after claimant made written claim in May of 1993. The Appeals Board, therefore, finds the written claim in May 1993 satisfied the requirements of K.S.A. 44-520a.

(2) The Appeals Board finds that claimant's average weekly wage on December 14, 1987, was \$334.68.

Claimant's hourly wage at the time was \$8.27 and average weekly overtime for the 26 weeks immediately preceding the date of accident was \$3.88. The base pay of \$330.80 added to the average overtime pay yields a \$334.68 average weekly wage. K.S.A. 44-511.

(3) The Appeals Board finds that claimant sustained an 11.8 percent permanent partial impairment to the right forearm.

The record contains numerous expert opinions regarding the nature and extent of claimant's disability. Claimant contends that her injuries included bilateral upper extremity injuries, low back injury, and cervical injury. She seeks benefits for a general body disability.

The Appeals Board finds the evidence establishes that claimant's injury was limited to the right upper extremity. The initial treating physician, Dr. Eyster, testified that claimant's complaints were limited to the fingers and wrists. The final diagnosis was a bone bruise to the piriformis wrist bone. Dr. Melhorn, the physician responsible for most of the treatment over the next several years, found permanent impairment to the right upper extremity only.

Several of the examining and treating physicians concluded there was no permanent impairment. Dr. Eyster, for example, concluded claimant had no permanent impairment. Dr. Wilkinson, also a treating physician, expected her complaints to be completely resolved. Dr. Pollock concluded claimant might have a temporary aggravation but no additional permanent impairment.

At the opposite extreme, the record contains an evaluation by Ernest R. Schlachter, M.D., who rates claimant's impairment as 32 percent to the body as a whole including impairment to the right shoulder, left shoulder, right upper extremity, and left upper extremity. The report from Dr. Blake C. Veenis who performed an independent medical examination at the request of the Administrative Law Judge, also concluded there was a 7 percent general body disability based upon impairment to both upper extremities.

The Appeals Board finds most convincing the opinion of Dr. Melhorn, as the physician responsible for most of the treatment provided. This treatment included surgery for de Quervain's in the right wrist and release of the carpal tunnel on the right. Dr. Melhorn rated claimant's impairment as 11.8 percent impairment to the right forearm which the Appeals Board finds to be the appropriate basis for disability benefits awarded in this case.

The Appeals Board notes the temporary total disability benefits previously paid in this case were paid at the rate of \$289 per week, the maximum rate for the period July 1, 1991, to June 30, 1992, and more than the maximum rate of \$256 in effect on the date of accident in this case. The parties did not address this issue. Claimant alleged new permanent injury in 1992. Although the Appeals Board found there was no new permanent injury, the Board will not disturb the weekly benefit rate for payments made as it was not raised and would be appropriate for a temporary aggravation during the July 1, 1991, to June 30, 1992, year. Since the payments appear to be for subsequent temporary aggravation, they will not be deducted from the total 200 weeks for forearm injury before applying the 11.8 percent disability.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Assistant Director Brad E. Avery dated January 17, 1997, should be, and the same is hereby, reversed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Carol Wilcots, and against the respondent, County of Sedgwick, and the Kansas Workers Compensation Fund, for an accidental injury which occurred December 14, 1987, and based upon an average weekly wage of \$334.68 for 5.42 weeks of temporary total disability compensation at the rate of \$289 per week or \$1,566.38, and 23.6 weeks at the rate of \$223.13 per week or \$5,265.87, for an 11.8% permanent partial disability to the claimant's right forearm, making a total award of \$6,832.25, all of which is presently due and owing.

Further award is made in favor of claimant and against respondent for \$21,794.37 in hospital and medical expenses previously paid by respondent.

Claimant is entitled to future medical expense only upon proper application to and approval by the Director.

Claimant's counsel is entitled to attorney fees in accordance with K.S.A. 44-536.

Respondent and the Kansas Workers Compensation Fund are each, by stipulation, responsible for 50% of the temporary total disability, permanent partial disability, and medical expenses. Each is also responsible for 50% of the fees necessary to defray cost of administration to be paid direct as follows:

Deposition Services	
Transcript of Regular Hearing	\$329.90
Alexander Reporting Co.	
Deposition of Ernest Schlachter, M.D.	171.70
Deposition of Greg Ricke, M.D.	368.10
Barber & Associates	
Deposition of Loretta A. Kirmer	120.60
Deposition of Robert L. Eyster, M.D.	128.40
Deposition of Robert A. Rawcliffe, M.D.	129.60
Deposition of Anthony Pollock, M.D.	206.20
Deposition of Chris Harper	118.40
Deposition of J. Mark Melhorn, M.D.	204.00

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
E. L. Lee Kinch, Wichita, KS
Chris Cole, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director